

**In the Matter Of:**  
**PUBLIC HEARING**

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**PUBLIC HEARING**

*June 05, 2018*

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PUBLIC HEARING

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IN THE MATTER OF THE BEACH ACT RULEMAKING  
AMENDMENTS TO PARTS 700, 703 AND 890.  
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Public Hearing held at the NYS Department  
of Environmental Conservation, Region 8 Office,  
6274 East Avon-Lima Road, Avon, New York, on  
June 5, 2018, commencing at 2:00 p.m., before  
MOLLIE T. McBRIDE, ESQ., Administrative Law Judge.

PRESENT:                   ANDREA J. HOBBS, Notary Public.

Proceedings

MS. McBRIDE: Good afternoon everyone.

We're going to get started. Thank you for coming.

My name is Molly McBride and I'm an administrative law judge with the New York State Department of Environmental Conservation.

I'll be presiding over today's public comments session regarding the amendments of parts 700, 703 and 890 of Title 6 of the official compilation of Codes, Rules, and Regulations of the State of New York.

The department is proposing rulemaking to amend water quality standards and the classification of the upper and lower New York Bay.

The purpose of this hearing is for the public to put unsworn statements on the record regarding these proposed amendments.

Written comments will be accepted by the department through midnight on June 12th, 2018. You may submit any written comments by that date to be considered by the department. The mailing address for the submission of written comments is available at our table here by the doorway.

Again, the purpose of this public hearing here today is to allow the public to make comments

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on the record. Notice for this hearing was published in the department's environmental notice which is an electronic newsletter on March 21st, 2018. Notice was also published in the state register.

Today is the first of two hearings we will be holding. The second hearing will be held on Thursday at the department's Region 2 office at the E floor conference room at 47-40 21st Street, Long Island City at 2:00 p.m.

If you would like to make a comment on the record here today, I would ask that you please fill out a speaker card and we will call your name when it is time for you to make your comments on the record.

This is an opportunity for the public to give additional information for the department to consider. If you would like to submit your comments in writing, you may do so by e-mail or submit them in mail. Again, the address is available here.

Before we take comments from the public, we're going to hear from Scott Stoner from the Division of Water.

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MR. STONER: Good afternoon. I am Scott Stoner, chief of the standards and analytical support section in the Division of Water at the New York State Department of Environmental Conservation or DEC.

I have a short explanatory statement about the proposed rulemaking that is the subject of today's public hearing.

The DEC has proposed amendments to parts 700, 703, and 809 of Title 6 of the New York Codes, Rules, and Regulations. The purpose of this proposed rule is to improve and protect water quality and to meet the requirements of the Federal Beaches Environmental Assessment and Coastal Health or BEACH, B-E-A-C-H, Act of 2000.

Specifically, the proposed rule would add standards for E. coli for all freshwater coastal recreation waters, that is the Great Lakes, and add standards for enterococci for all marine coast recreation waters.

The proposed rule would also upgrade the classification of certain Roman Numeral One waters of upward New York Bay and a portion of lower New York Bay to Class SB to add the best use of primary

Proceedings

contact recreation to these waters.

The notice of proposed rulemaking was published in the New York State register on March 21st, 2018. A revised regulatory impact statement, regulatory flexibility analysis, and job impact statement were published in the New York State register on May 23rd reflecting updated cost information.

The DEC conducted two public information meetings for the proposed rule, one on May 1st at the DEC Region 2 office in Long Island City and the other on May 3rd at the DEC Region 8 office in Avon or right here. Thank you.

MS. McBRIDE: Thank you, Scott. I don't have any speaker cards, but if there's anyone who's here who would like to make a statement on the record, you can let me know. Is there anyone that would like to put a comment on the record? Okay.

I would remind you that you may also submit your comments in writing. Equal weight is given to written and oral comments and again, the date for the deadline of submission of written comments is June 12th, 2018, and the mailing address is available at our table here.

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All right. And there's no one that wants to make a comment so we will go off the record now. We'll wait a few minutes in case anyone arrives late.

(Discussion off the record.)

MS. McBRIDE: Okay. We're back on the record. We went off the record for a few minutes to see if anyone came in that wanted to make a comment on the record.

Is there anyone here that would like to make a comment regarding this proposed rulemaking before we close the hearing record? Okay.

Then we'll note for the record that no one has indicated they'd like to make a comment so we'll close the record for today. Thank you for coming out.

(Proceedings concluded at 2:14 p.m.)

\* \* \*

STATE OF NEW YORK )

ss:

COUNTY OF CHAUTAUQUA )

I DO HEREBY CERTIFY as a Notary Public in and for the State of New York, that I did attend and report the foregoing proceedings, which were taken down by me in a verbatim manner by means of machine shorthand. Further, that the proceedings were then reduced to writing in my presence and under my direction. That the proceedings were taken to be used in the foregoing entitled action.

Andrea J. Hobbs

ANDREA J. HOBBS,  
Notary Public.



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**In the Matter Of:**

NY STATE DEPT OF ENVIROMENTAL CONSERVATION

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**PROCEEDINGS**

*June 07, 2018*

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NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL  
CONSERVATION

-----x  
In the Matter of The Proposed Amendments to  
6 NYCRR 700, 703, and 890

-----x

June 7, 2018  
2:00 p.m.

47-20 21st Street  
Long Island City, New York

REPORTER: Suzanne Catalano

A P P E A R A N C E S:

DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
Office of Hearings & Mediation Services  
625 Broadway - 1st Floor  
Albany, New York 12233

BY: MOLLY T. McBRIDE, Administrative Law Judge

DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
Bureau of Water Assessment and Management  
Division of Water  
625 Broadway - 4th Floor  
Albany, New York 12233

BY: SCOTT J. STONER, MS, Chief, Standards and  
Analytical Support Section

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MS. McBRIDE: We're going to get started. Good afternoon, everyone. Can you hear me okay in the back? I don't think you need a microphone for me. Okay. Thank you all for coming this afternoon. My name is Molly McBride and I'm the Administrative Law Judge with the New York State Department of Environmental Conservation and I'll be presiding over this afternoon's public comment session.

Today we will be having a public comment session regarding Amendment to Parts 700, 703 and 890 of Title 6 of the official compilation of Codes, Rules, and Regulations of the State of New York.

The purpose of this proposed rulemaking is to amend Parts 700, 703, and 890 to adopt new standards to meet requirements of federal law and to upgrade the classifications of certain surface waters in New York Harbor.

Written comments will be accepted by the Department through June 12, 2018. And the mailing address of the submission of the

1 Proceedings

2 written comment is available at our sign-in  
3 table here in front of the room.

4 The Department scheduled two public  
5 hearings to receive comments on this  
6 proposed rulemaking. The first hearing was  
7 held in the Department's Region 8 office in  
8 Avon, New York, on Tuesday, June 5th. And  
9 we are having a second hearing here today in  
10 the Department's Region 2 office.

11 Prior to the public comment  
12 hearings, the Department held two  
13 information sessions to meet with the public  
14 and answer any questions they had regarding  
15 this matter. Those meetings were held, and  
16 again, in the Region 8 office and the  
17 Department's Region 2 office.

18 The purpose of today's public  
19 comment session is to allow the public to  
20 comment on the proposed rulemaking and it is  
21 not a question-and-answer session. Anyone  
22 who wishes to speak today must fill out a  
23 public-speaker card. The cards are  
24 available at the DEC sign-in table here at  
25 the front of the room. If you have not yet



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filled out a card, but would like to make a statement, please come forward and fill out a card for us. I will call the speakers in the order that they filled out their card here today. When I call the name, if I mispronounce it, I apologize; please correct me when you come forward. Speak into the microphone when you come forward. If you are speaking on behalf of a group, please identify the name of the group that you are presenting on behalf of.

If you have any questions for DEC staff, I'm going to ask you to please address or raise those questions outside of today's public comment session. We have a court reporter who is making a record of today's comments so I would ask that you please speak loudly, slowly, and clearly. If you are reading your comments from something you have written down, I would ask that you please hand them to me after you have read your comments into the record; that will help the court reporter. We will not be keeping them in the DEC file. It's

1 Proceedings

2 simply to help the court reporter prepare  
3 the transcript so that we do have an  
4 accurate record of the proceedings here  
5 today.

6 If you do not wish to make an oral  
7 record here today, you may submit your  
8 comments in writing. Equal weight is given  
9 to oral and written comments. Again, the  
10 deadline for submission of written comments  
11 is June 12, 2018.

12 Before we call the members of the  
13 public to make their statements, I'd like to  
14 ask Scott Stoner from the Division of Water  
15 to give a brief presentation.

16 MR. STONER: Good afternoon. Can  
17 you hear me okay? I'm Scott Stoner, Chief  
18 of Standards and Analytical Support Section  
19 in the Division of Water at the New York  
20 State Department of Environmental  
21 Conservation or DEC.

22 I have a short explanatory statement  
23 about the proposed rulemaking that is the  
24 subject of today's public hearing. The DEC  
25 has proposed amendments to part 700, 703,

1 Proceedings  
2 and 890 of Title 6 of the New York Codes and  
3 Rules and Regulations. The purpose of this  
4 proposed rule is to improve and protect  
5 water quality and meet requirements of the  
6 federal beaches environmental assessment and  
7 coastal health parenthetical BEACH Act of  
8 2000.

9 Specifically, the proposed rule  
10 would add standards for E. coli for all  
11 fresh water coastal recreational waters that  
12 is the Great Lakes and add standards for  
13 Enterococcus for all marine coast recreation  
14 waters. The proposed rule would also  
15 upgrade the classification of certain class  
16 Roman Numeral I waters of Upper New York Bay  
17 and a portion of Lower New York Bay to class  
18 SB to add the best use of primary contact  
19 recreation to these waters.

20 The notice of proposed rulemaking  
21 was published in the New York State Register  
22 on March 21, 2018. A revised regulatory  
23 impact statement, regulatory flexibility  
24 analysis, and job impact statement was  
25 published in the New York Register on May

1 Proceedings  
2 23rd reflecting updated coast information.  
3 The DEC conducted two public  
4 information meetings for the proposed rule."  
5 One on May 1st at the DEC Region 2 office in  
6 Long Island City, right here, and the other  
7 on May 3rd at the DEC Region 8 office in  
8 Avon. Thank you.

9 MS. McBRIDE: Thank you. I'm going  
10 to start calling speakers. Again, I  
11 apologize if I mispronounce, please correct  
12 me when you come forward. Come forward and  
13 speak into the microphone. First, Peter  
14 Linderoth. Again, if you're representing a  
15 group, please identify the group.

16 MR. LINDEROTH: Good afternoon. I'm  
17 Peter Linderoth, Water Quality Program  
18 Manager for Save the Sound. Save the Sound  
19 is a bi-state program of Connecticut Fund  
20 for the environment with the offices in  
21 Mamaroneck, New York and New Haven,  
22 Connecticut. Our mission is to restore and  
23 protect Long Island Sound and its watershed.  
24 I appreciate the opportunity to testify  
25 today on behalf of Save the Sound and our

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members.

Water quality monitoring is a core component of Save the Sound's work. One of our monitoring programs is a seasonal fecal bacteria monitoring program, now in its fifth year, which measures Enterococcus levels at 53 stations in Esthete County and Queens. We use the fecal indicator bacteria Enterococcus for this program because it is an EPA preferred and recommended fecal indicator for marine and freshwater which allows for better comparability between water bodies.

Save the Sound, along with many other community-based water quality monitoring groups in New York State, has been eagerly awaiting the publication of a complete Triennial Review that includes an update of all New York State Water Quality Standards. We know that DEC conducted a Triennial Review in 2012, set a deadline for completion to adopt the final rule in 2014, but has yet to complete the process.

We are pleased to now have a

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proposal to update NYSWQS and there are many aspects of the proposed rule that we strongly support. Specifically, Save the Sound supports the reclassification of the coastal waters of New York Harbor from Class 1 to Class SB. The SB classification is a more accurate reflection of the primary contact uses that take place in these waters and will provide greater protection of public health.

We are also very supportive of the adoption of Enterococcus as the fecal indicating bacteria in the coastal recreational waters of the State. Recent science confirms that Enterococcus is a better indicator of pathogens that cause human illness than Fecal Coliforms or Total Coliforms, providing better public health protection in primary and secondary contact waterways.

Adopting this FIB will also result in SPDES permit changes, triggering a new round of investment to update wastewater treatment facilities. These investments

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will directly improve water quality, protect public health, and support the commercial shell fishing industry, an important source of jobs in many New York coastal communities. On behalf of the coastal communities of Long Island and Westchester, we thank the DEC for strengthening the NYSWQS.

However, some of our constituents have been left behind due to the narrow definition of the waterways where these new and improved criteria will be applied. Specifically, the residents of much of coastal New York City, in the Bronx, Queens, and on the East River.

Save the Sound urges the DEC to adopt Enterococcus as the FIB for all primary contact recreation waters in the state. Having different criteria for estuary waters and streams that flow into marine waters will create an unnecessarily confusing and complex management situation.

The proposed rule should not limit the use of this superior FIB to a

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DEC-defined "recreation season." If the plan is to revert to existing State criteria in the off-season, that will require the use of multiple FIB which is cumbersome and impractical for monitoring and management purposes.

Furthermore, we object to the longer duration for evaluating water quality in the proposed rule, specifically the 90-day geometric mean and Statistical Threshold Value. The EPA 2012 Recreational Water Quality Criteria directs states to use a duration for the GM and STV of no longer than 30 days in order to provide the best public health protection.

EPA further recommends that states consider the number of samples evaluated in order to minimize the possibility of incorrect use attainment decisions. The draft rule does not address the sample size that will be collected. A minimum sample size should be specified in the New York State Water Quality Standards.

I thank you for the opportunity to



1 Proceedings  
2 submit this testimony today on behalf of  
3 Save the Sound and our 5,000-plus members.  
4 Thank you.

5 MS. McBRIDE: Thank you. Lawrence  
6 Levine.

7 MR. LEVINE: Thank you. My name is  
8 Lawrence Levine. I'm senior attorney and  
9 director of Urban Water and Structure with  
10 Natural Resources Defense Council. We're a  
11 national and international environmental  
12 advocacy organization. We work not only at  
13 those levels but also at the state and  
14 regional, and local levels as well. I work  
15 specifically on water quality and urban  
16 water quality issues in particular. They  
17 have 30,000 members in New York State alone  
18 and 13,000 members in New York City. On  
19 their behalf, I appreciate the opportunity  
20 to testify and kind of offer our comments  
21 today and we will be offering detailed  
22 comments in writing next week as well.

23 I'd like to echo the last speaker,  
24 and I'm sure many of the speakers you hear  
25 for the rest of the afternoon as well, in

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first supporting the reclassification of certain waters in the harbor and of finally modernizing the indicator bacteria for waters of E. coli bacteria to Enterococcus bacteria, which has been the federally recognized appropriate standards since 1986, which is 32 years ago. That is an important step forward. But it is not by itself sufficient. Simply identifying the correct indicators is not the same as what the standard is of the maximum indicator that is deemed safe and protective of human health. Moreover, that indicator bacteria is not proposed in this rule to be applied to all of the waters where it needs to be applied.

I will go through a few points in summary. First of all, DEC should adopt criteria that match or exceeds EPA's 2012 recreational water criteria and should apply all waters in the state designated for primary contact recreation, not only to the waters that fit the Federal Beach Act definition of personal recreation waters. EPA has said that explicitly to the DEC in a

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letter dated May 9, 2016. And EPA explicitly said, more recently said, in a letter on March 7, 2018, which also said in the earlier letters as well that Class 1 and Class SD waters in New York City, in particular, need to be covered. EPA has spoken directly to those particular waters which include most of the waters in New York State left out from this proposal because they are Class SD or Class I, left out are the Hudson River, East River, Harlem River, Arthur Kill, Bronx River, Hutchinson River, Westchester Creek, Flushing Bay, Flushing Creek, Alley Creek, Gowanus Canal, Newtown Creek, Coney Island Creek, that all should be carried to Jamaica Bay all of which are fouled by bacteria and sewage and polluted run-off when it rains in New York City. For these waters, the proposal leaves in place the decade-old standard that EPA, as I said, directed the state to update.

The State has also said under the General Clean Water Act principles that the water quality criteria must be sufficient to

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support and protect the designated uses.  
These same standards need to apply to  
primary contact waters statewide. It really  
doesn't matter where someone is recreating.  
They are going to get sick just as much if  
they're in coastal water or great lake  
waters if the water is polluted. And the  
same science and same standards are equally  
applicable inland.

Also, I note even if DEC limits this  
proposal to BEACH Act, quote/unquote BEACH  
Act waters, defined as coastal recreation  
waters from the BEACH Act, the rule is still  
too narrow. The said definition in federal  
law excludes that waters that are upstream  
of the mouth of a river, that's the boundary  
line between coastal and non-coastal and  
that particular definition. This proposal  
considers the East River and the Harlem  
River to be excluded. That East River  
includes Flushing Bay as on the bounds of  
the East River, the western part of Long  
Island Sound. Those are tidal straights,  
the East River and the Harlem River. They

1 Proceedings  
2 are not rivers by scientific definition.  
3 Those water bodies are not upstream of the  
4 mouth of the river. They're not excluded.  
5 They're rather included in definition in the  
6 Federal BEACH Act in the coastal recreation  
7 waters. So that's in terms of the scope of  
8 where this rule applies.

9 Secondly, the timing in which this  
10 rule applies, as the last speaker said,  
11 should not be limited to a recreation season  
12 that's defined by default in this proposal,  
13 which is May to October and especially  
14 should not be subject to modification of  
15 that recreation season of when the rule  
16 applies by DEC on a unilateral basis without  
17 actually going through a process of a  
18 changing a rule or seeking a variance if  
19 needed. The proposal includes language that  
20 would allow DEC to unilaterally change that  
21 that recreation season on a case-by-case  
22 basis that's not appropriate.

23 The stringency of the standards the  
24 numeric limits included, rely on the weaker  
25 of the two options offered in EPA's 2012

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Recreational Water Quality Criteria. The proposal gives no reason for selecting the less protective option. I would note that the DEC has previously said that it intended to select the more protective option.

There's no explanation of why that has changed. Similarly, the proposal relies on a 90-day geometric mean to measure compliance with that numeric standard. That is directly at odds with EPA's Recreational Water Quality Criteria from 2012 which provide for a 30-day geometric mean and those criteria don't give an option between 30 and 90 days. But DEC has nonetheless proposed a 90-day geometric mean that's less protective and it allows temporary spikes in bacteria levels that follow wet weather events, follow rainfall. It allows those spikes to be mapped more easily by a larger number of cleaner samples. It measures again a 90-day period. That is not appropriate when we're talking about protecting human health from acute exposure and biotic pollution, which is what bacteria

1 Proceedings

2 in our waters is typically is.

3 The proposal also does not include a  
4 minimum sampling frequency to govern how  
5 that geometric mean is calculated. The  
6 current Fecal Coliform rules actually do  
7 have a minimum frequency because they do  
8 have a similarly have a geometric mean. The  
9 current rules have a minimum frequency of  
10 five samples per 30 days.

11 I'll note that the Department of  
12 Health sanitary code for beach testing also  
13 includes five samples per 30 days, also  
14 includes a 30-day geometric mean, I would  
15 say. There is no reason for DEC's  
16 regulations to be inconsistent with that.  
17 They both are intended to protect public  
18 health when people are recreating in the  
19 water. It doesn't matter if it's at a beach  
20 or not.

21 For similar reasons the sampling,  
22 whether it's at a beach or not, should be  
23 done near-shore, which is where people come  
24 in contact with the water and that needs to  
25 be how compliance is measured and that

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should also be specified in the rule.

Finally, there are several provisions in the rule that actually weaken or they tend to include that standard as well year-round to allow DEC to unilaterally shorten that season, as, again, with Enterococcus and E. coli. And it again, allows permittees to circumvent the strict procedures to obtain a variance if DEC simply determines that disinfection is not necessary to protect public health; that's the quote from the proposal. No rationale is given for that since the entire purpose for this rule is to protect public health and to recognize bacteria above certain limits does not protect public health. There should not be a provision in here that allows DEC unilaterally to deviate from that and especially not one that allows DEC to do that without going through proper process of actually changing the standard or actually adopting a variance which require public hearing or require approval by EPA. Those are the issues we sincerely hope that DEC



1 Proceedings  
2 will address each of these and will  
3 strengthen the proposed rule before  
4 finalizing and adopting it. That's  
5 necessary to protect the public health.  
6 That's something the public people who  
7 recreate in the water, organizations who  
8 restored our water for years, if not  
9 decades, and it's something more that the  
10 EPA has said to the State the State needs to  
11 do. Thank you.

12 MS. McBRIDE: Thank you. Eymund  
13 Diegel.

14 MR. DIEGEL: My name is Eymund  
15 Diegel. I'm on the board of directors of  
16 the Gowanus Dredgers Canoe Club. And we  
17 provide free boating to the community and I  
18 have such a direct stake in the rules that  
19 you're proposing in the water quality of the  
20 boating community we serve.

21 When I first came to New York City,  
22 it was from South Africa where poverty  
23 forces poor people to get pee and pooh  
24 directly into their rivers. And I was a bit  
25 baffled that the richest, most powerful city

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in the world still does the same, that I'm here today to ask that we set a water quality standard that matches first world city. However, that being said, over the last decade the city and the state has made huge improvements in our water quality standard, something that I feel we need to protect by setting the standards and the bar higher. In this case the Enterococcus supported by the EPA and we apply this, not just parts of our recreation water bodies but to all parts. The five most polluted water bodies, if we fix those, we fix the whole harbor. And as someone who runs 1500 canoe club trips on the canal every year, we know directly what Coney Island whitefish are all about. We know directly what Class SD means. And we want that higher swimmable-water-quality standard, however crazy it sounds.

This morning I took water quality samples using the Enterococcus standards. And I ask that DEC support that standard so that we have a higher standard quality norm.

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2 And I ask that we use a standard year-round.  
3 The city and the state are spending over 1.7  
4 billion dollars clearing up the Gowanus  
5 Canal site. And I would ask that the  
6 standards protect that investment in the  
7 interest of water bodies of the City as a  
8 whole. Thank you.

9 MS. McBRIDE: Thank you. Erin  
10 Doran.

11 MS. DORAN: Erin Doran on behalf of  
12 Riverkeeper. Thank you for this opportunity  
13 to provide comments on the Department's  
14 proposed Rule. Riverkeeper is a  
15 member-supported watchdog organization  
16 dedicated to defending the Hudson River and  
17 its tributaries. We also monitor and  
18 protect the drinking water supply of nine  
19 million New York City and Hudson Valley  
20 residents.

21 As an initial matter, we  
22 appreciate that the Department is proposing  
23 to adopt water quality criteria based on  
24 Enterococcus as the fecal indicator bacteria  
25 for at least some waterways. Riverkeeper

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also appreciates that the proposal to reclassify certain waters from Class I to Class SB would result in more stringent dissolved-oxygen standards for those waterways. However, while the proposed rule is a step in the right direction, it does not go far enough to protect people and wildlife from pollution.

Nearly every time it rains, raw sewage overflows into waterways around New York City and in other places that have infrastructure. In order to effectively address this problem, we need standards that are based on recent science and designed to protect people who come into contact with contaminated waters. Therefore, we urge the Department to adopt water quality standards consistent with the EPA's 2012 Recreational Water Quality Criteria for all primary contact recreation waters in the Sate.

Although the Department's proposed rule includes some aspects of the 2012 Recreational Water Quality Criteria, the new bacteria standards would only apply

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to a limited set of waterways. That means other waterways around New York City and throughout the State would still be subject to the Department's old, scientifically-indefensible standards. In addition, even the proposed new standards fall short of EPA's recommendation.

First, the scope of the proposed rule is insufficient. EPA has made it clear that the Department should adopt water quality standards consistent with the 2012 Recreational Water Quality Criteria for all primary contact recreation waters in the State, but the proposed rule fails to do so. The only New York City waterways that would be subject to the new Enterococcus standards are coastal recreational waters of Class SA and SB waterways, even though the Department's regulations state that all classes of saline-surface waters shall at least be suitable for primary contact recreation. The proposed rule similarly limits the applicability of the new E. coli standards for freshwater. In accordance

1 Proceedings

2 with EPA's clear directives, we urge the  
3 Department to adopt water quality standards  
4 consistent with the 2012 Recreational Water  
5 Quality Criteria for all primary contact  
6 recreation waters in the State.

7 Second, the Department should not  
8 limit the applicability of the new bacteria  
9 standards to the primary contact recreation  
10 season. EPA's 2012 Recreational Waters  
11 Quality Criteria do not provide for seasonal  
12 limitations, and the Department has not  
13 provided any rationale for applying the new  
14 criteria on a seasonal basis, from May to  
15 October, in certain waterways. The seasonal  
16 limitation is particularly troubling in  
17 light of the proposed rule's definition of  
18 the primary contact recreation season, which  
19 would allow the Department to unilaterally  
20 shorten the season on a case-by-case basis.  
21 We urge the Department to revise the  
22 proposed rule so that the new bacteria  
23 standards apply year-round.

24 Third, the Department should revise  
25 the new bacteria standards to better protect

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human health. EPA's 2012 Recreational Water Quality Criteria are based on recent science and designed to protect human health. While the Department must, at a minimum, adopt standards consistent with the 2012 Recreational Water Quality Criteria, we urge the Department to adopt EPA's recommended criteria that are most protective of human health. Specifically, the Department should adopt Enterococcus criteria with a geometric mean of 30 colony-forming units per 100 milliliters, and a statistical threshold value of 110 cfu per 100 milliliters. Additionally, consistent with the 2012 Recreational Water Quality Criteria, the Enterococcus criteria should be based on a 30-day, rather than a 90-day, interval. The proposed rule could also better protect human health by imposing a monitoring frequency for the new bacteria standards and specifying that sampling locations be near-shore to better capture the conditions where people are most likely to come into contact with contaminated waterways.

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Fourth and finally, the Department should not weaken the existing Total and Fecal Coliform criteria. The proposed rule erodes the existing criteria by imposing a seasonal limitation, similar to the one discussed previously for the new bacteria standards, and by allowing permittees to circumvent variance procedures by demonstrating that disinfection is not necessary to protect human health. The existing criteria are already outdated, and the Department should not water them down further with this proposed rule.

In sum, we urge the Department to adopt year-round standards that are consistent with EPA's 2012 Recreational Water Quality Criteria and that better protect human health for all primary contact recreation waters in the State. Thank you.

MS. McBRIDE: Thank you Korin Tangtrakul.

MS. TANGTRAKUL: My name is Korin Tangtrakul and I am a member of the Stormwater Infrastructure Matters or SWIM



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Coalition steering committee. Thank you for the opportunity to submit public testimony on the New York State Department of Environmental Conservation's proposed rulemaking to amend water quality standards for some New York City waterways.

SWIM is a diverse group of more than 70 community-based, citywide, regional, and national organizations, water recreation user groups, institutions of higher education, scientists, citizens and businesses who advocate for the health of New York City's vital waterways. SWIM is dedicated to ensuring swimmable and fishable waters around New York City through natural, sustainable stormwater management practices or green infrastructure in our neighborhoods.

The DEC existing standards rely on outdated indicators for bacteria contamination. New York State is one of the few remaining states in the nation that has not yet adopted the EPA's 2012 Recreational Water Quality Criteria. These

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nationally-applicable standards are based on Enterococcus as opposed to the outdated use of the fecal coliform-based testing methods. Enterococcus more accurately reflects primary contact recreation safety, compared to coliform and E. coli; is comparable across fresh, salt brackish waters; and, perhaps most importantly, is a federally required minimum water quality criterion for waters like those in New York City that are polluted by Combined Sewer Overflows and stormwater runoff.

Although DEC's proposed new standards are based on more reliable indicators, they would only apply to a limited set of waterways. That means other waters would still be subject to DEC's old, scientifically indefensible standards. In addition, even the proposed new standards fall short of the Environmental Protection Agency's recommended recreational water quality criteria, which are designed to protect human health. We believe DEC must do better.

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Specifically, our concerns are as follows:

First, The proposed rule is too limited in geographic scope. Modern, protective standards are needed for all NYC waters. DEC should adopt bacteria standards for Enterococcus consistent with EPA's 2012 RWQC for all primary contact recreation waters in the state, including class SD and I waters. This includes all marine and estuarine waters in New York City, including major rivers and tributaries. In New York City, the proposed rule coversly only the harbor south of Governor's Island, Raritan Bay south of Staten Island, the Atlantic Ocean, Jamaica Bay, and Long Island Sound to the east of the Throgs Neck Bridge. The proposal leaves out the Hudson River, East River, Harlem River, the north and west shores of Staten Island, Gowanus Canal, Newtown Creek, Coney Island Creek, and tributaries of Jamaica Bay, all of which are tidal waters fouled by bacteria from sewage and polluted runoff when it rains. For

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these waters, the proposal leaves in place decades-old standards, which EPA has directed the state to update because they do not reflect current science and do not protect public health. The exclusion of these waters is unjustified.

The proposed rule should not limit the applicability of the new bacteria standards to a DEC-defined recreation season. DEC proposes that the standards will be applicable only during the recreation season from May to October. Moreover, DEC could alter these dates at its discretion. EPA's 2012 Recreation Water Quality Criteria do not provide for seasonal standards, but instead impose standards year-round. People engage in primary contact activities outside of the defined recreation season that put them in contact with these water bodies. Even if seasonal standards were appropriate, DEC should not be allowed to unilaterally alter the defined recreational season on a case-by-case basis, as the draft rule would allow. A variable

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recreation season, in which not only are exceedances of water quality standards acceptable in the off season, but exceedances could be acceptable during what DEC typically considers the recreation season, will confuse and endanger those who use the water year-round, especially during the weeks surrounding what DEC proposes to define as a recreational season. DEC should impose bacteria standards year-round.

The new bacteria standards should be more stringent to better protect human health. DEC should adopt an Enterococcus limit of 30 colony forming units per 100 milliliters geometric mean and 110 colony forming units per 100 milliliters statistical threshold value, which is more protective of two alternatives in the 2012 Recreation Water Quality Criteria, rather than 35 colony forming units per 100 milliliters for the geometric mean and 130 statistical threshold value, which is the less protective in the 2012 Recreation Water Quality Criteria.

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DEC should also adopt a 30-day, instead of a 90-day, geometric mean, so that spikes in bacterial levels that occur after a rainfall are not so easily averaged-out by cleaner samples taken over a long period of time. EPA's 2012 Recreation Water Quality Criteria require such a 30-day geometric mean. To prevent regulated entities from gaming the system, DEC must specify a minimum sampling frequency for Enterococcus of at least five samples per 30 days. This would ensure that samples are spread over a representative sample of weather conditions and that there are enough samples to determine compliance with the statistical threshold value criterion, which provides that no more than 10 percent of individual samples within the averaging period may exceed a certain bacteria level. It is due to this same reasoning that the existing Fecal Coliform standards provide a minimum sampling frequency. There is no justification to promulgate the proposed Enterococcus standards without such a

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mandated frequency. Additionally, DEC should specify that sampling locations must be near-shore so that the results accurately reflect the conditions where people are most likely to come into contact with the waterway, rather than the center of the channel that may fail to identify effects from local CSOs.

The proposed rule improperly weakens the existing total and Fecal Coliform standards. The rule would limit the applicability of existing standards to the primary contact recreational season, allowing DEC to unilaterally shorten the defined May through October recreational season on a case-by-case basis. The proposed rule would also allow permittees to circumvent the strict procedures to obtain a variance from standards, including EPA approval, based on a determination by DEC that disinfection is not necessary to protect human health. DEC must not roll back existing protections for these waters.

Thank you again for the opportunity

1 Proceedings  
2 to provide this testimony for the public  
3 record. We concur with and support the  
4 testimony of our fellow advocacy  
5 organizations Riverkeeper, Natural Resources  
6 Defense Council, the Bronx River Alliance  
7 and Save the Sound.

8 MS. McBRIDE: Thank you. Amy  
9 Motzny.

10 MS. MOTZNY: My name is Amy Motzny.  
11 I am the Watershed Project manager for the  
12 Gowanus Canal Conservancy. The Gowanus  
13 Canal Conservancy is dedicated to  
14 facilitating the development of a resilient,  
15 vibrant, open, space network centered on the  
16 Gowanus Canal through activating and  
17 empowering community stewardship of the  
18 Gowanus Watershed. Since 2006, we have  
19 served as the environmental steward for the  
20 neighborhood through leading grassroots  
21 volunteer project; educating students on  
22 environmental issues and working with  
23 agencies, elected officials and the  
24 community to advocate for, build and  
25 maintain innovative green infrastructure



1 Proceedings  
2 around the Gowanus Canal.

3 Thank you for the opportunity to  
4 submit public testimony on the New York  
5 State Department of Environmental  
6 Conservation's proposed rulemaking to amend  
7 water quality standards for some New York  
8 City waterways.

9 In agreement with SWIM Coalition and  
10 other New York City water organizations and  
11 stakeholders, the Gowanus Canal Conservancy  
12 supports the DEC's decision to adopts new  
13 water quality standards based on more  
14 reliable indicators based on Enterococcus  
15 species, rather than the outdated use of  
16 Fecal Coliform. However, we similarly feel  
17 that the proposed amendments:

18 Fall short of the EPA's 2012  
19 Recreation Water Quality Criteria for all  
20 primary contact recreation waters in the  
21 State, which are designed to protect human  
22 health; are severely limited in their  
23 geographic scope, leaving out the Gowanus  
24 Canal and other impaired water bodies in the  
25 region; should not be limited in their

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applicability to a DEC-defined recreation season; should be more stringent to better protect human health.

The Gowanus Canal Conservancy urges DEC to extend new water quality standards that are consistent with the EPA's recommendations and based on Enterococcus and E. coli to the Gowanus Canal and other regional waterways including, Hudson River, East River, Harlem River, the north and west shores of Staten Island, the Bronx River, Hutchinson River, Westchester Creek, Flushing Bay, Flushing Creek, Alley Creek, Newtown Creek, Coney Island Creek, and tributaries of Jamaica Bay, all of which are fouled by bacteria from sewage and polluted runoff when it rains. The Gowanus Canal alone receives more than 377 mg of combined sewage overflow throughout the entire year, demonstrating a critical need for year-round water quality compliance. The Gowanus Canal is home to an active boating community and serves a diverse and engaged community that is facing rapid growth and immense change.

1 Proceedings

2 The people of Gowanus deserve a clean,  
3 healthy and accessible water body that  
4 promotes public health and supports  
5 year-round recreation. Thank you.

6 MS. McBRIDE: Thank you. Edith  
7 Kantrowitz.

8 MS. KANTROWITZ: My name is Edie  
9 Kantrowitz. I am with New York City Friends  
10 of Clearwater, and with United for Action.  
11 I would like to commend the DEC's decision  
12 to propose new water quality standards for  
13 some New York waterways. However, these  
14 standards, while they appear to be a step in  
15 the right direction, need to be more  
16 stringent, and more widely encompassing, if  
17 we are to protect humans and wildlife from  
18 sewage pollution in the waterways around New  
19 York City, and throughout the State.

20 It does not make sense to implement  
21 bacteria standards that only apply to a  
22 defined recreation season from May to  
23 October. New Yorkers engage in recreational  
24 and other activities throughout the year  
25 that may put them in contact with the

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rivers, bays and other waters that are part of our city. The currently proposed draft also allows the DEC to unilaterally change the time period in which water quality standards apply on a case-by-case basis. This philosophy of time limitation is actually a step backwards, it is not recommended by the EPA, and it is unacceptable if we are to take our water quality protection seriously. All DEC bacteria standards, without exception, should apply year-round.

The current proposal also calls for a 90-day geometric mean sampling period for Enterococcus and E. coli standards. This is not sufficient sampling frequency; in fact, the EPA has recommended a 30-day geometric standard, and this is the frequency that should be adopted. This more frequent sampling is essential to help ensure that spikes in bacterial count which may take place after a rainfall are not obscured and averaged out by readings taken on cleaner days during the 90-day period.

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The Enterococcus standards should also specify at least five samples per 30-day period. Currently, this requirement only applies to E. coli. Furthermore, the Enterococcus standard should adopt the more protective values suggested by EPA, a limit of geometric mean 30 and statistical threshold value 110, rather than the less protective values of geometric mean 35 and statistical threshold 130.

Also, DEC should require that samples be taken near the shore, since that is where people are most likely to come into contact with the water.

Another major problem with the proposed standards is that they do not cover all of the water in and surrounding New York City. The currently proposed rule would apply only to New York Harbor south of Governor's Island, Raritan Bay south of Staten Island, the Atlantic Ocean, Jamaica Bay, and Long Island Sound to the east of Throgs Neck Bridge. It would not include the Hudson River, the Hutchinson River,

1 Proceedings  
2 Westchester Creek, Flushing Bay and Flushing  
3 Creek, Alley Creek, Gowanus Canal, Newtown  
4 Creek, Coney Island Creek, and the  
5 tributaries of Jamaica Bay.

6 These waterways, however, are used  
7 by New Yorkers for recreational and other  
8 purposes, and they are typically fouled by  
9 sewage and other pollution after it rains.  
10 Yet under the current proposal they would be  
11 covered only by the existing outdated  
12 standards based on total and fecal coliforms  
13 and would not benefit from the new  
14 standards. We deserve adequate protection  
15 for all of our waters. In fact, the EPA has  
16 actually directed the State to update the  
17 older standards because they do not reflect  
18 current scientific knowledge, and they do  
19 not adequately protect public health.

20 The DEC should therefore protect New  
21 York's waters by adopting bacteria standards  
22 consistent with the EPA's 2012 Recreational  
23 Water Quality Criteria. These more  
24 stringent criteria should apply to all of  
25 our waterways, and they should apply

1 Proceedings  
2 throughout the entire year. Thank you for  
3 this opportunity.

4 MS. McBRIDE: Thank you. Matt  
5 Malina.

6 MR. MALINA: Good afternoon. My  
7 name is Matt Malina. I'm the director of  
8 NYC H2O. We're a nonprofit that provides  
9 education programs for thousands of New  
10 Yorkers teaching them about the New York  
11 City water system and ecology. We bring  
12 hundreds of students and families to beaches  
13 all around New York City and in direct  
14 contact with the water. So to protect the  
15 kids that we work with and our staff, we ask  
16 that the DEC use the Enterococcus test as a  
17 standard. It's more modern science, use the  
18 same standards for all the water body. The  
19 testing should be done all year round, not  
20 just the recreation season. The fish are  
21 living in there all the year round. And the  
22 30-day geometric means should be adopted,  
23 not the 90-day to smooth over any spikes in  
24 any pollution or sewage getting in the  
25 waters.

1 Proceedings

2 Why is more testing something we're  
3 in favor of? The more data you have, the  
4 more better chance you'll have in finding  
5 illegal sewer connections, which  
6 unfortunately still happen today. There was  
7 a very bad one found in Coney Island Creek a  
8 few months ago that was coming in from a  
9 large apartment complex called the Beach  
10 Haven Apartments. It took, not the DEC, but  
11 it took the DEP almost six months to figure  
12 out where the sewage was coming from. So  
13 having more data will help to find those  
14 illegal connections.

15 I will note that there is still  
16 illegal connections and raw sewage floating  
17 into the Coney Island Creek. And the DEP  
18 still has not found it. So the more clues  
19 they have, the more testing can happen, the  
20 better shot that we'll be able to nip that  
21 in the bud.

22 I'll also add that, NYC's  
23 beneficiary of an environmental benefit  
24 program through the DEC, Atlantic Creek,  
25 where there was an illegal sewer connection



1 Proceedings  
2 and thanks to testing and the good work you  
3 and your colleagues do, they were able to  
4 stop that. And we are then able to provide  
5 education programs to teach kids about the  
6 creek and how stormwater can be managed in a  
7 natural way, so more testing. Thank you.

8 MS. McBRIDE: Thank you.

9 That was our last speaker card.

10 Anyone else here would like to make a  
11 comment on the record? I'll remind you that  
12 the comment period stays open until June 12,  
13 2018. So you may submit written comments  
14 until that day. And we have the contact  
15 information at the table here near the  
16 doorway. Thank you all for coming out here  
17 today.

18 (Time noted: 2:50 p.m.)  
19  
20  
21  
22  
23  
24  
25

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C E R T I F I C A T E

I, SUZANNE CATALANO, a  
shorthand reporter and Notary Public within  
and for the State of New York, do hereby  
certify:

That the within proceedings is  
a true and accurate record of the  
stenographic notes taken by me.

I further certify that I am not  
related to any of the parties to this action  
by blood or marriage, and that I am in no  
way interested in the outcome of this  
matter.



SUZANNE CATALANO

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